IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF MARCH
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE SRI ANIL R. DAVE, THE CHIEF JUSTICE
and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 4496 of 2009

Between:

M/s.RKS Motors Pvt Ltd., a Company incorporated under the provisions of the Companies Act, 1956, rep.by its Managing Director, Sri.Vinay Saboo Saboo Towers, 6-3-905, Somajiguda, Hyderabad

..... PETITIONER

AND

1 State of Andhra Pradesh ,rep.by its Principal Secretary Commercial Taxes, SEcretariat Buildings, Hyderabad
2 The Commissioner of Commercial Taxes, Hyderabad
3 The Additional Commissioner (CT) Legal, O/o.The Commissioner, Commercial Taxes,Andhra Pradesh
4 The Appellate Deputy Commissioner, Punjagutta Divison, Hyderabad
5 The Assistant Commissioner (CT) (III),Enforcement Wing O/o.The Commissioner (CT) AP ,Nampally,Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of Certiorari calling for the records pertaining to the assessment order passed by the 5th respondent dated 26.8.2008 assessing the demand of tax of Rs.8,84,747/- for the financial year 2005-06 and the order passed by the 4th respondent vide orders dated 26.12.2008 in Appeal No.AO.No.PV/90/2008-09 rejecting the application of stay made in the said Appeal and the consequential rejection of the Revision petition by the 3rd respondent vide CCT`s Ref.No.LIII(2)/42/2009 dated 13.2.2009 received by the

petitioner company on the 25.2.2009 and other relevant records and consequently set aside the same by declaring the same as arbitrary, illegal, and unconstitutional being in gross violation of the Articles, 14,19,246,301 of the Constitution of India and consequently set aside the same

Counsel for the Petitioner: PANASIA ADVOCATES AND CONSULTANTS

Counsel for the Respondents: Sri Krishna Kaundinya, SC for Commercial Taxes

The Court made the following :

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ORAL ORDER: (Per Sri Anil R. Dave, CJ)

Rule. Service of Rule is waived by Sri Krishna Kaundinya, learned Special Standing Counsel appearing for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. In this petition, order dated 13-02-2009 passed by the Additional Commissioner (CT) Legal has been challenged.

3. The facts giving rise to the present litigation, in a nutshell, are as under:

The petitioner had challenged the validity of assessment order dated 26-08-2008 before the appellate authority. At the time of filing the appeal, an application had also been submitted for stay of recovery of tax, during the pendency of the appeal. The stay application had been rejected and, therefore, a revision application had been filed against the order of rejection. The said revision application has also been rejected by virtue of the impugned order dated 13-02-2009.

4. The case of the petitioner is that he is hopeful of succeeding in the appeal and, therefore, during the pendency of the appeal, the amount of tax sought to be recovered should not be recovered. He has a prima facie case in his favour and, therefore, it has been submitted

that stay pending appeal with regard to the recovery of tax should have been granted.

5. It has been submitted by the learned advocate appearing for the petitioner that certain amount which could not have been considered as consideration for sale has been included in the sale by the assessing officer. He has given certain instances whereby he has made out a case to show that amount recovered from the customers for rendering certain services has also been included in sales.

6. On the other hand, the learned Special Standing Counsel relying upon the definition of 'sale' has submitted that the assessing officer has passed just and proper order and, therefore, the petitioner has no chance of succeeding before the appellate authority.

7. Both the learned advocates have submitted that we may not give final pronouncement on the merits of the case because the appeal has not yet been heard.

8. After hearing the learned advocates, prima facie, we feel that the petitioner has made out a case for getting some relief. Certain items, in our opinion, could not have been included in sales.

9. Upon perusal of the papers, we prima facie, believe that some relief should have been given by the revisional authority while entertaining the stay application.

10. In the circumstances, we direct stay of recovery on condition that one-third of the amount sought to be recovered be paid by the petitioner within three weeks from today and on that condition, implementation of the impugned recovery proceedings is stayed. The amount paid so far shall be given credit to while calculating one-third amount of tax. We further clarify that the observations made hereinabove are prima facie observations which need not be looked into by the appellate authority while deciding the appeal finally.

11. For the aforesaid reasons, the petition is partly allowed with no order as to costs.

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ANIL R. DAVE, CJ

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RAMESH RANGANATHAN, J

05th March, 2009
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